

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appl. No. : 09/853,160  
Applicant : FUNAKOSHI, Satoru  
Filed: : May 11, 2001  
TC/A.U. : 1772  
Examiner : P. Nordmeyer

Confirmation No.: 6913

Docket No. : 7372/71158  
Customer No. : 22242



January 31, 2005  
Monday

**REPLY BRIEF  
and  
CONTINGENT REQUEST TO TREAT SAME AS RESPONSE**

Commissioner for Patents  
U.S. Patent and Trademark Office  
Customer Service Window  
401 Dulany Street  
Alexandria, VA 22314

Dear Sir:

Appellant respectfully submits this Reply Brief and requests reinstatement of the Appeal. If this Reply is deemed insufficient or that if the Board determines that the Appeal cannot be reinstated, then in such contingency, please treat this as a Response. Appellants have had and still do have no intention of abandoning this application.

Appellant respectfully requests that the Appeal be reinstated.

Appellant respectfully submits that the Examiner's July 30, 2004 communication with its newly presented issues presents no impediment to allowance of this application. Appellants respectfully submit the rejections should be reversed.

### **Drawings**

Appellants have noted that in their specification, page 4, line 3 from the bottom, the reference numeral "4" should appear between the words "layer" and "as." Appellants submit their drawings are free of objection. This objection is not understood in view of the June 7, 2002 Amendment.

### **35 U.S.C. §112(¶2)**

Appellant respectfully submits the claims are indeed definite and the formality rejection in the July 30, 2004 PTO communication is mis-placed. This application was filed on May 11, 2001 and the claims on appeal were not objected to as indefinite at any time until July 30, 2004.

Elected Claim 1 reads:

Claim 1 (previously presented): A speaker grille-integrated foamed thermoplastic resin molding for automotive interior comprising a base portion and a speaker grille having a plurality of opening holes wherein at least the base portion has a foamed layer and the foamed layer in the base portion has a density  $\rho$  of not greater than  $0.6 \text{ g/cm}^3$  and an average expansion ratio of the speaker grille is 1 to 1.3 times, wherein the speaker grille is formed in one piece with the base portion from the same material as the base portion so as to be surrounded by the base portion.

In claim 1, "the speaker grille is formed in one piece with the base portion from the same material as the base portion so as to be surrounded by the base portion." It would be apparent to a person who is skilled in the art that "formed in one piece" is simply another way of saying integrally. The base portion is formed integrally with the speaker grille. They are not two separate parts as evident from the claim language.

In claim 1, the foamed layer in the base portion is defined as having "a density  $\rho$  of not greater than  $0.6 \text{ g/cm}^3$ " as would be understood by a person skilled in the art.

The density of the foamed layer is independent of the density for the speaker grille.

In claim 1, the speaker grille has "an average expansion ratio" that "is 1 to 1.3 times" as would be understood by a person skilled in the art.

In claim 1, the term expansion ratio is known to those skilled in the art. In the claimed context, the term can mean a value obtained by dividing the density of a material before foaming by the apparent density of the material after foaming. This is shown, for instance, by the Dictionary of Plastics Technology, (1994) (Japanese and English translation attached).

Consequently, the speaker grille has the recited expansion ratio and that may not necessarily preclude a similar expansion ratio for the base portion.

Even if the composition used to make the speaker grille and the base portion were the same, as is provided for in claim 1, it does not follow that the speaker grille and the base portion must have the same density and the same expansion ratio. This would be understood by anyone who is skilled in the art based on the specification as originally

filed, including the original claimed subject matter. For instance, non-elected method claim 3 it is self-evident that the speaker grille and base portion may be formed from the same composition but can have different expansion ratios and different densities.

**Prior Art Rejections**

Appellant respectfully submits the art-based rejection(s) can be reversed, if not withdrawn, based on the argument of record in the Appeal Brief.

Appellant respectfully submits that the rejection and the new rationale urged in its support (July 30, 2004 PTO paper) rest on a faulty interpretation of the elected claims on appeal. The questions posited in the July 30, 2004 paper are not reflective of the claimed subject matter nor reflective of how a person who is skilled in this art would interpret the claimed subject matter and its patentably distinction from the prior art.

A favorable decision is respectfully solicited.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

By: \_\_\_\_\_



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